

**WRITTEN REMARKS OF CHAIRMAN MONTIE R. DEER BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
MARCH 14, 2001**

Mr. Chairman, Mr. Vice Chairman, and members of the Committee. Thank you for this opportunity to report to you on the work of the National Indian Gaming Commission. As you are no doubt aware, the other Commission members and I are approaching the end of our terms, and we would like to say that we appreciate the interest and support that the Commission has received from this Committee during our tenures.

My remarks can be summarized by saying simply that the tremendous growth in the Indian gaming industry, particularly in light of the recent, dynamic changes in California, have strained our ability to keep pace.

In 1988, when the Commission was created, Indian gaming was Indian bingo. Today, it is a major industry producing revenues on par with Nevada and New Jersey combined. While the Indian gaming industry has increased more than one hundred fold, the Commission in vast contrast, has barely doubled from its start-up capacity. It is becoming increasingly difficult for the Commission effectively to carry out its requisite functions under the Indian Gaming Regulatory Act, a situation that is both frustrating and potentially damaging to the industry as a whole. A solid, effective Commission is an important ingredient in the health of this industry.

To put the Commission's resource needs in proper perspective, Mr. Chairman, please note that there are more than 300 tribal gaming facilities in operation today. These facilities are located throughout our great country, from Eastern Connecticut to Southern California, and from South Florida all the way to Washington State. They vary tremendously in size and sophistication, from tiny bingo halls to some of the largest casino operations in the world. To provide proper oversight, the Commission must not only retain a top-notch professional workforce, but we must also equip them with the tools they need to do their job. Given the size and scope of the industry, we are finding it more and more challenging to meet these important obligations.

We come to the Committee today seeking a \$2 million appropriation for FY 2003. To be completely candid, we view this request as an interim measure while we work with the Congress and the Indian gaming industry to secure legislation needed to allow flexibility in our fee collection structure. The Administration supports this one-time budget request and our goal of statutory adjustments to the current limitations on our permanent financing.

The upcoming fiscal year marks the fifth consecutive funding cycle during which the Commission has operated under a flat budget. As the Committee will recall, the Indian Gaming Regulatory Act (IGRA) was amended in 1997 to increase the Commission's fee assessment authority to the present level of \$8 million. It was

recognized that the significant growth in the Indian gaming industry necessitated increased capacity on the part of the Commission.

Since the 1997 increase, the industry has continued to grow. The industry now generates approximately \$11 billion per year – an increase of nearly fifty percent since our last adjustment. Despite this rapid growth, the Commission continues to operate under a cap designed for an industry much smaller than the present size.

As previously reported to this Committee, we again emphasize that the Indian gaming boom in California continues to place a severe strain on our resources. Prior to passage of Proposition 1A in March 2000, there were 39 tribal gaming operations in California. Today, there are 46. In addition to the new facilities, it is important to note that many of those original 39 operations have undergone significant expansion, further impacting our workload. This growth is sure to continue. The number of California tribes having compacts for class III gaming could ultimately reach as high as 70.

The nature of gaming in California has changed as well, as major commercial players, such as Harrah's Entertainment, Anchor Gaming, Stations Casinos, and Donald Trump, have submitted management contracts to the Commission. While the contract review process gives us the opportunity to ensure that the goals of Congress for such arrangements can be met, this also means that Commission staff must conduct complex financial background investigations, review the many documents related to the contractual relationship, and evaluate the environmental impacts of the casino development. To do our job in a timely manner we have had to hire temporary employees and retain consultants, to conduct background investigations, to provide financial analysis of the contracts, and to develop necessary environmental assessments.

A regrettable casualty of our flat budget has been our regular government-to-government consultations with tribal officials. Until the realities of our limited resources forced us to stop, the Commission had been conducting quarterly consultations with tribes. These one-on-one sessions were held at our regional offices and provided an opportunity for tribal leaders and the Commissioners to meet and discuss matters of mutual interest or concern. We also used the occasion to provide training on a wide array of topics, including internal control standards and ethical issues. These consultations not only resulted in better, more productive relations with tribal governments, but also helped keep enforcement costs in check.

Among our most important activities as an agency is rulemaking, and we have worked hard to carry out our activities in this arena in keeping with the highest principles of the federal-tribal relationship. The primary rulemaking activities initiated by this Commission have been undertaken through an advisory committee process, followed by formal hearings to secure the fullest level of input. But the many benefits derived from this method of rulemaking come with a price, in that they are more expensive than simply writing the rules and receiving written comment.

In our effort to manage costs, we have also had to reduce travel across-the-board and we have instituted a hiring freeze. The Commission is solvent, but it is solvent because we have allowed vacant positions to remain unfilled and because we have reduced our presence in Indian country. We are certain that this is not what Congress had in mind when it created the Commission.

When we produced our Biennial Report for the years 1999-2000, we estimated our 2001 work force at seventy-seven employees. In fact today we employ sixty-eight people, two of whom are temporary employees, because we are concerned about the sustainability of staffing beyond this level. By “sustainability,” we mean more than simply covering the cost of salaries and benefits, but also equipping the staff and getting them to where they need to be. The oversight responsibilities of the Commission require professional employees – field investigators, auditors and lawyers – and we do not have enough. But we do not have the money to hire more of these employees and fund the travel, overhead, and other operational expenses associated with a larger staff.

By way of illustration, let’s look at our Audit Division and the Minimum Internal Control Standards (MICS), which became effective February 2000. We began FY 2002 with six (6) auditors. Through attrition, we have lost two. These positions, though critical, have not been filled due to our need to impose a hiring freeze and a shortage of funds to allow auditors to travel.

Due to its cash intensive nature, gaming is an exceedingly vulnerable industry. And in contrast to an industry in which all transactions are documented by cash register receipts, gaming operations have hundreds or thousands operations each day that cannot be supported by such documentation. The lack of supporting documentation for bets and other transactions makes the industry especially vulnerable. To protect the assets of the operation under these circumstances, observers must carefully monitor the wagering activities. This makes the industry highly labor intensive.

During the early 80’s, the Nevada Gaming Control Board recognized that pre-established procedures or “internal controls” were essential to identify and deter irregularities effectively. In 1985, Nevada promulgated a framework of minimum internal control standards deemed necessary to ensure the proper recognition of gaming revenues and to safeguard the interests of the gaming public. Other jurisdictions soon followed Nevada’s lead. Inherent in an internal control structure are the concepts of individual accountability and segregation of incompatible functions. The existence of standards alone, however, is not enough. Any internal control system carries the risk of circumvention, which is why a process of independent oversight is so critical to the integrity of an operation.

Consistent with our peers, the Commission promulgated its own minimum internal control standards (MICS). Recognizing the complexity of this aspect of our oversight responsibility, the Audit Division has been staffed by accountants experienced in the performance of gaming compliance audits. Without regard to the venue in which the gaming is conducted, history has demonstrated that, left unregulated, gaming will fall

victim to those intent on preying upon its vulnerabilities. Consequently, the Commission has a profound appreciation for the need to measure and evaluate compliance with the MICS.

One way to view the MICS is as a protective shield against threats to tribal gaming integrity. With an appropriate level of sampling, we believe we can measure compliance with the MICS and make a meaningful contribution to ensuring the overall integrity of Indian gaming. Unfortunately, at current staffing levels, it would take twenty to thirty years for the Commission to evaluate each of the existing gaming operations.

There are other needs as well. The Commission would like to complete several projects that will pay future dividends in terms of overall efficiency and effectiveness. We are in the final stages of our technology initiative and are ready to begin implementing the financial and records management components of our new database. We are also preparing to introduce an electronic accounts receivable capability that will provide a database interface for on-line payments of fees. We have plans to improve our public information system by introducing dedicated FOIA software.

We are in the final phases of a project to improve the speed with which we provide fingerprint results from the FBI to the tribes. In the nine years we have been handling fingerprints for the tribes, we have processed more than 145,000 sets. Last year, with support from the FBI, we established a high-speed direct connection. Once our hardware needs are fully met, we will be able to take full advantage of this connection, and reduce the time it takes to process criminal background information for tribal employees from weeks or months to days or hours, a tremendous benefit to gaming tribes.

As mentioned at the beginning, my term at the Commission is drawing to a close, as are the terms of the other Commissioners. Our successors will face some significant challenges, and we hope that my remarks today will help pave the way as they guide the Commission in the next three years. Thank you for your kind attention. Let me say for myself, Vice Chair Homer and Commissioner Poust, that we each appreciate the support and many courtesies that you have extended us.

Thank you. We would be happy to answer any questions that the Committee may have.